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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,497	04/02/2004	Robert J. Poth	MMIC1100-2	2327
38396	7590	03/06/2006	EXAMINER	
JOHN BRUCKNER, P.C. 5708 BACK BAY LANE AUSTIN, TX 78739			MASINICK, MICHAEL D	
			ART UNIT	PAPER NUMBER
			2125	
DATE MAILED: 03/06/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/817,497

Applicant(s)

POTH, ROBERT J.

Examiner

Michael D. Masinick

Art Unit

2125

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>4/2/2004</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

It is noted by the examiner that the claims in their current form provide no function.

While the specification can be used as a guide, the claims must be interpreted literally.

Claim Rejections - 35 USC § 101 & USC § 112

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 12-27 are rejected under 35 U.S.C 101 as being directed to non-statutory subject matter. The independent claim 12 is directed simply to a listing of parts, which provide no useful result or function.

Claims 12-27 are rejected under 35 U.S.C. 101 because the claimed invention is not supported by either a credible asserted utility or a well established utility.

Claims 12-27 are also rejected under 35 U.S.C. 112, first paragraph. Specifically, since the claimed invention is not supported by either a credible asserted utility or a well established utility for the reasons set forth above, one skilled in the art clearly would not know how to use the claimed invention.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claim 12-25 and 27 is rejected under 35 U.S.C. 102(e) as being anticipated by U.S.

Patent No. 6,850,252 to Hoffberg.

3. Referring to claim 12, Hoffberg shows an apparatus, comprising: a microcontroller (“microcontroller with built-in EPROM” – Column 122, line 19); a digital temperature sensor coupled to the microcontroller (Column 191, line 37); a liquid crystal display coupled to the microcontroller (Column 188, line 59); a set of cursor buttons coupled to the microcontroller (Column 188 discusses a variety of cursor input options, one of which is buttons); an electrically erasable programmable read-only memory coupled to the microcontroller (“EPROM” as noted above); an upload capable connector coupled to the electronically erasable programmable read-only memory (see note below); a real time clock coupled to the microcontroller (Column 179, lines 29-31); and a back up power supply coupled to the real time clock (Column 179, lines 29-31).

4. Examiner notes that all EPROM devices inherently must have some type of “upload capable connector” coupled to them in order to be able to make changes to the data contained in the EPROM as this is the purpose of a modifiable memory component.

5. Referring to claims 13, 15, 17, and 19, Hoffberg shows data structures which contain a listing of pin numbers, user types, times, and schedules (Column 180, line 13 through Column 181, line 25).

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6. Referring to claims 14, 16, 18, and 20, Hoffberg shows the use of databases with database tables ("An access control procedure limits access to the management information stored in the database tables using at least one permissions table"). Examiner submits that all other data structures would also use the same system.

7. Referring to claims 21 and 24, Hoffberg shows a wireless interface coupled to the upload capable connector ("While wireless data transmission as described above may be used, the preferred method of receiving sensor information is through a serial digital or analog (i.e., 4-20 mA transmitter) data transmission...").

8. Referring to claim 22, Hoffberg shows a transceiver coupled to the upload capable connector ("An infrared transceiver is mounted on the crush resistant casing and in electronic communication with the processor and memory module to provide for receipt and storage of executable applications, and receipt, storage, and transfer of digital information to other electronic devices").

9. Referring to claim 23, Hoffberg shows a repeater coupled to the transceiver ("Multiple network devices, such as remote access equipment, routers, switches, repeaters and network cards having security functions are configured to contribute to implementation of distributed firewall functions in the network.").

10. Referring to claim 25, Hoffberg shows a PDA ("In known manner, available personal digital assistants ("PDAs"), available from 3Com (Palm Pilot III), Microsoft Windows CE-based devices, Apple ("Newton" model 100, 110, 120), Tandy, Poquet, Sharp, Casio, AT&T (Eo 440), Hewlett-Packard, etc. may also be employed as a human interface device.").

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11. Referring to claim 27, Hoffberg shows HVAC equipment coupled to the microcontroller (“Therefore, heating ventilation and air conditioning control (HVAC), lighting, appliances, machinery, valves, security sensors, locks, gates, access points, etc., may all be controlled locally or remotely through interfaces of the local system, which may include logic level signals, relays, serial ports, computer networks, fiber optic interfaces, infrared beams, radio frequency signals, transmissions through power lines, standard-type computer network communications (twisted pair, coaxial cable, fiber optic cable), acoustic transmissions and other known techniques.”).

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,850,252 to Hoffberg in view of U.S. Patent No. 5,144,621 to Kinashi et al.

14. Hoffberg does not show the use of an auxiliary memory.

15. Kinashi shows the use of an auxiliary memory for backup purposes (Claim 1). It would have been obvious to one of ordinary skill to use an auxiliary memory as a backup to the primary memory in order to ensure that the system had maximum uptime and to prevent hardware failure downtime.

Conclusion

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael D. Masinick whose telephone number is (571) 272-3746. The examiner can normally be reached on Mon-Fri, 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo Picard can be reached on (571) 272-3749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



MDM

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